



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEABROOK EMPLOYEES ASSOCIATION *

*

Complainant *

*

CASE NO. M-0575:8

v. *

*

DECISION NO. 87-07

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TOWN OF SEABROOK *

*

Respondent *

APPEARANCES

Seabrook Employees Association Representative

Cora Stockbridge, President

Town of Seabrook Representative

Gary W. Holmes, Esq., Counsel

BACKGROUND

The Seabrook Employees Association ("Association") filed charges of unfair practices against the Town of Seabrook ("Town") on October 2, 1986. The Association alleged that the Town implemented substantial changes in working conditions as a result of their interpretation of the Fair Labor Standards Act as it applies to compensatory time. Specifically, the Association alleged that the Town has unilaterally changed the practice of compensatory time by prohibiting it after April 15, 1986. The Association claims the Town action violates their rights under RSA 273-A and is an unfair labor practice under RSA 273-A:5, I, (a).

The Town answered that it had notified employees that as of April 15, 1986 no employee would be granted compensatory time off in lieu of overtime compensation. The Town denied that this action was in any way unlawful. The Town admitted that prior to August 1985 it did have the policy and practice of giving compensatory time on a one for one basis, to employees working more than 40 hours per week. Following the Garcia vs. San Antonio MTA Supreme Court decision the Town, in August 1985, computed overtime pay, paid it and subsequently paid only overtime without any use of compensatory time. By Act of Congress, the Fair Labor Standards Act was amended in November of 1985, effective on April 15, 1986. The Town states that the amendment allows municipalities to use compensatory time but based on one and a half hours of compensatory time for each one hour of overtime worked. The Town claimed that other provisions of the Act did not apply to them since their policy was changed in August of 1985. The Town alleged

that the notice of April 15, 1986 was simply confirmation of Town policy not to use compensatory time in lieu of overtime pay.

A hearing was held at PELRB's office in Concord, N.H. on November 25, 1986 with all parties represented.

FINDINGS OF FACT

1. At the hearing, the Association introduced documents (see Association #1 thru #5) showing: the Town's policy announcement of April 15, 1986 indicating no more compensatory time off, minutes of discussions with and among selectmen of the application of the Garcia case to the Town and its policy of compensatory time during July and August of 1985; and minutes of a selectmen's meeting on November 27, 1985.
2. Testimony was received which clearly established that beginning in the late summer of 1985 the Town did not allow compensatory time but rather paid overtime to employees who worked beyond a normal 40 hour work week.
3. The Association was certified by the PELRB in February of 1985 and negotiations began in November of 1985 and overtime and compensatory time were subjects of discussion but no agreement was reached.

RULINGS OF LAW

1. The change of past practice complained of took place during the summer and fall of 1985 and the complaint was filed in October of 1986, well beyond the six (6) month requirement of RSA 273-A:6, VII, and is therefore not timely filed and should be dismissed.
2. The Town and the Association are aware, or should be, that the subject of compensatory time, overtime pay, or any similar subject of wages are mandatory subjects of bargaining.

DECISION

The complaint is not timely filed and is hereby dismissed in accordance with RSA 273-A:6, VII.


ROBERT E. CRAIG, CHAIRMAN

Signed this 2nd day of February, 1987.

By unanimous vote. Chairman Robert E. Craig presiding, members James Anderson, Richard Molan, Seymour Osman and Richard Roulx present and voting. Also present Evelyn C. LeBrun, Executive Director.